

REMARKS

Claims 1-28 are pending. By this Amendment, claims 1, 2, 6, 10, 12, and 15 are amended. The Examiner has allowed claims 16-28.

**35 U.S.C. § 102**

The Examiner rejected claims 1-5 as being anticipated by Jackson et al. (U.S. Pat. No. 6,033,338) under 35 USC 102. As amended herein, claim 1 recites, in relevant part, a controller programmed with an engine braking algorithm “adapted to increase engine speed in proportion to an amount by which the throttle is positioned below a predetermined setting.” Since the prior art does not disclose an engine braking algorithm adapted to increase engine speed in proportion to an amount by which the throttle is positioned below a predetermined setting, it is believed that claim 1 is patentably distinct. Since claims 2 – 5 are dependent from independent claim 1, either directly or indirectly, they are believed to be patentable for at least the reasons given for claim 1, and for other reasons as well.

**35 U.S.C. § 103**

The Examiner rejected claims 7-14. Claims 7-9 and 11 are dependent from claim 1, either directly or indirectly, and are therefore believed to be patentable for at least the reasons noted above with respect to claim 1, and for other reasons.

The Examiner rejected Claim 10 as being unpatentable over Jackson et al. in view of Warner (U.S. Pat. No. 6,536,408). The Examiner noted that Jackson fails to disclose a number of elements missing from claim 10, and appears to have relied on Warner to provide the missing elements.

Claim 10 as amended herein recites, in relevant part, an engine braking algorithm “implemented by the controller wherein the amount of engine braking is proportional to the difference between the predetermined reading and the throttle position sensor.” None of the cited references, either alone or in combination, discloses the amount of engine braking being

proportional to the difference between a predetermined reading and the throttle position sensor. Therefore, claim 10 as amended is believed to be patentable over the prior art. Since claims 12-14 depend from claim 10, either directly or indirectly, they are also believed to be patentable for at least the reasons provided above with respect to claim 10, and for other reasons as well.

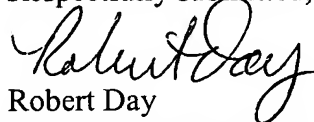
### **Allowable Subject Matter**

The Examiner objected to claims 6 and 15, but said they would be allowable if re-written in independent form to include the limitations of the base claims and intervening claims. Claims 6 and 15 have been amended herein to include the limitations of the respective base claims and intervening claims, and are therefore believed to be patentable.

In view of the foregoing, it is submitted that this application is in condition for allowance. Favorable consideration and prompt allowance of the application are respectfully requested.

The Examiner is invited to telephone the undersigned if the Examiner believes it would be useful to advance prosecution.

Respectfully submitted,

  
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